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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,074	07/24/2003	Joseph Samuel Incarnato		9770

7590 11/04/2004
JOSEPH S. INCARNATO
1008 TRACY DR.
SILVER SPRING, MD 20904

EXAMINER

HENEGHAN, MATTHEW E

ART UNIT	PAPER NUMBER
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2134

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,074

Applicant(s)

INCARNATO ET AL.

Examiner

Matthew Heneghan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-10 is/are allowed.
- 6) ☒ Claim(s) 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

- 4-11
1. Claims ~~1-3~~ have been examined.

DM

Priority

The following is a quotation of the appropriate part of 35 U.S.C. 120:

An application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

The following is a quotation of the appropriate part of MPEP §711.04(a):

Although the abandoned files are not pulled until the maximum permissible period for which an extension of time under 37 CFR 1.136(a) plus 1 month has expired, the date of the abandonment is after midnight of the date the period for reply actually expired. This is normally the end of the 3-month shortened statutory period.

2. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows: the filing date of the instant application, 24 July 2003, is after the official date of abandonment of U.S. Patent Application No. 10/054,396, to which the instant was filed as a continuation-in-part. The last period of shortened statutory period of reply for that application, based upon a final rejection that was mailed by the office on 9 April 2003, expired on 9 July 2003; the date of abandonment was therefore 10 July 2003.

Since the claim to priority under 35 U.S.C. 120 to U.S. Patent Application 09/429,087 is based upon that application's relationship to 10/054,396, the instant application also cannot claim the benefit of that application's filing date.

If Applicant desires to restore the benefit of the filing dates of the parent applications, Applicant is advised to file a Petition To Revive (See MPEP §711.03(c) Part III) including an Express Abandonment (see MPEP §710.02(e)) for Application 10/054,396. Please be advised that such a restoration would not directly lead to the withdrawal of any objection or rejection set forth in this Office Action.

Claim Objections

3. All previously objected claims have been cancelled.

Claim Rejections - 35 USC § 101 and 35 USC § 112

4. All claims previously rejected under 35 U.S.C. 101 and 35 U.S.C. 112 have been cancelled.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraph of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,556,964 to Scherbius.

The ciphering apparatus disclosed by Scherbius, commonly known in the art as an *Enigma Machine*, is a machine that constitutes a computer, wherein a data stream is encrypted or decrypted on a character-by-character basis. The mapping of the input characters to output characters constitutes a conversion matrix (see claim 1). The action is made in response to the depression of contact keys, i.e. the keyboard (see p.1, lines 60-65). The wiring, rotation, and configuration of the respective wheels (see p.2, lines 96-110) constitute a hard-wired computer program.

Allowable Subject Matter

6. Claims 4-10 are allowed.
7. The following is an examiner's statement of reasons for allowance:

Regarding claim 4, no art could be found in which the matrix is traversed as in claim 4. The closest art found, U.S. Patent No. 5,596,516 to Higashi et al. discloses a technique that processes matrices using a matrix multiplication algorithm.

Claims 5-10 are allowable based upon their dependence upon claim 4.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

8. Regarding the objection to Applicant's priority claim, Applicant's arguments filed 21 September 2004 have been fully considered but they are not persuasive. The correspondences subsequent to the mailing of the Final Rejection on 9 April 2003 in the previous application do not affect the determination of the date of abandonment. It is therefore proper to deny priority to Application 10/054,396.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,668,103 to Wilson uses matrices by selectively XORing their contents with data.

U.S. Patent No. 4,847,861 to Hamatsu et al. discloses an algorithm using matrices for key determination.

U.S. Patent No. 5,533,127 to Luther discloses a system for encrypting two-dimensional images.

U.S. Patent No. 6,445,797 to McGough discloses a system for decrypting a data stream using a series of keys.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew E. Heneghan, whose telephone number is (571) 272-3834. The examiner can normally be reached on Monday, Tuesday, Thursday, and Friday from 8:30 AM - 4:30 PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Morse, can be reached at (571) 272-3838.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Or faxed to:

(703) 872-9306


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MEH



October 28, 2004



GREGORY MORSE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100